



# PUBLIC NOTICE

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DA 11-1514

Release date: September 7, 2011

## NOTICE OF ORDER OF CALIFORNIA PUBLIC UTILITY COMMISSION REQUIRING SUBMISSION OF FILINGS IN WT DOCKET NO. 11-65 THAT CONTAIN NRUF AND LNP DATA

CC Docket No. 99-200

CC Docket No. 95-116

WT Docket No. 11-65

On April 28, 2011, and June 3, 2011, subject to a protective order, the Commission placed into the record in WT Docket No. 11-65 (Applications of AT&T Inc. and Deutsche Telekom AG For Consent To Assign or Transfer Control of Licenses and Authorizations) various Numbering Resource Utilization and Forecast ("NRUF") reports filed by wireless telecommunications carriers and disaggregated, carrier-specific local number portability ("LNP") data related to wireless telecommunications carriers.<sup>1</sup> Pursuant to the protective order, outside persons participating or intending to participate in WT Docket No. 11-65 who are not involved in competitive decision-making activities and who have signed the Acknowledgment of Confidentiality attached to the protective order may review and use the NRUF and LNP data "solely for the preparation and conduct of [WT Docket No. 11-65] before the Commission."<sup>2</sup>

The *NRUF/LNP Protective Order* provides that if a state department or agency, among others, issues a subpoena for or orders the production of NRUF or LNP data or information derived from NRUF and LNP data ("NRUF/LNP Confidential Information") that a person has received pursuant to the protective order, the person receiving such an order must notify all affected parties and the Commission, such that "the Commission and each affected Wireless Telecommunications Carrier has a full opportunity to oppose such production prior to the production or disclosure of any NRUF/LNP Confidential Information."<sup>3</sup>

<sup>1</sup> See Proposed Transfer of Control of T-Mobile USA, Inc. and Its Subsidiaries From Deutsche Telecom AG to AT&T Inc.; Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports To Be Placed Into the Record, Subject to Protective Order, WT Docket No. 11-65, CC Docket No. 99-200, *Public Notice*, DA 11-710 (rel. Apr. 18, 2011); Proposed Transfer of Control of T-Mobile USA, Inc. and Its Subsidiaries From Deutsche Telecom AG to AT&T Inc.; Additional Local Number Portability Information To Be Placed Into the Record, Subject to Protective Order, WT Docket No. 11-65, CC Docket No. 99-200, *Public Notice*, DA 11-945 (rel. May 24, 2011).

<sup>2</sup> Applications of AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, *NRUF/LNP Protective Order*, DA 11-711 (rel. Apr. 18, 2011).

<sup>3</sup> *NRUF/LNP Protective Order* ¶ 15.

The California Public Utilities Commission (“California PUC”) is investigating AT&T’s proposed acquisition of T-Mobile USA.<sup>4</sup> Throughout the FCC’s review of the proposed acquisition, several parties have submitted filings to the FCC that contain NRUF or LNP data or information derived from NRUF or LNP data, and have filed redacted copies of those filings with the California PUC. On August 31, 2011, the California PUC ordered all parties that had filed redacted copies of their FCC filings with the California PUC to provide the PUC with confidential unredacted copies.<sup>5</sup>

The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from public disclosure under 5 U.S.C. § 552(b)(4).<sup>6</sup> Nonetheless, when the public interest has so required, the Commission has provided access to that data to persons not involved in competitive decision-making subject to a protective order requiring that the data be used solely for the purpose of participating in the relevant proceeding before the Commission and that the data and information derived from the data not be made public.<sup>7</sup> The Commission has also provided NRUF and LNP data to the United States Department of Justice for the Department’s use in antitrust investigations upon assurances from the Department that the material will be kept confidential and used for only legitimate enforcement purposes.<sup>8</sup>

The California PUC’s August 31<sup>st</sup> Order notes that to the extent information required to be furnished to the PUC is confidential, it may be filed under seal and that the PUC cannot release the confidential information except by order of the California PUC.<sup>9</sup> The Order provides that information filed as Confidential, Highly Confidential or NRUF/LNP Confidential under the FCC’s protective orders “will be held in confidence pursuant to California Public Utilities Code section 583 and the applicable

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<sup>4</sup> See Order Instituting Investigation, *Order Instituting Investigation on the Commission’s Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy*, Investigation 11-06-009, California Public Utilities Commission (issued June 15, 2011) (*California PUC Order Instituting Investigation*).

<sup>5</sup> Administrative Law Judge’s Ruling Regarding Information Filed Under FCC’s Protective Orders, *Order Instituting Investigation on the Commission’s Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy*, Investigation 11-06-009 (Aug. 31, 2011) (*California PUC Aug. 31<sup>st</sup> Order*).

<sup>6</sup> Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7607, para. 78 (2000).

<sup>7</sup> See, e.g., Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements – Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed Into the Record, Subject to Protective Order, WT Docket No. 08-246, CC Docket No. 99-200, *Public Notice*, 24 FCC Rcd 2910 (2009); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 08-95, CC Docket No. 99-200, *Public Notice*, 23 FCC Rcd 11398 (2008).

<sup>8</sup> Notice of Request for Access to Carrier Data Filed in the Numbering Resource Utilization and Forecast (NRUF) Reports, *Pleading Cycle Established*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, 25 FCC Rcd 271 (2010); Notice of Request for Access to Carrier Data Filed in the Numbering Resource Utilization and Forecast (NRUF) Reports, *Pleading Cycle Established*, CC Dkt. No. 99-200, CC Dkt. No. 95-116, 24 FCC Rcd 8637 (2009).

<sup>9</sup> *California PUC Aug. 31<sup>st</sup> Order* at 4-5.

FCC protective orders. The [California Public Utilities] Commission and its staff shall treat any confidential information that is subject to the FCC protective orders in a manner consistent with the terms of the applicable protective orders.”<sup>10</sup> In addition, prior in the proceeding, the California PUC adopted a protective order, explicitly modeled after and substantially similar to the Commission’s Second Protective Order in WT Docket No. 11-65 (the FCC’s review of the applications to transfer control of T-Mobile USA’s licenses to AT&T).<sup>11</sup> The California PUC also stated that information and documents filed under seal in its proceeding would be afforded the protections provided by its General Order No. 66 and California Public Utilities Code section 583.<sup>12</sup> General Order No. 66-C, Section 2, provides that confidential information obtained by the California PUC will not be open to public inspection, and California Public Utilities Code section 583 provides that no employee of the California PUC shall divulge any confidential information.

The Commission is providing this notice to inform carriers of the orders of the California Public Utility Commission to allow carriers the opportunity to contact the California PUC, file an objection, or take any other action they may deem appropriate if they have concerns or oppose disclosure of their NRUF or LNP Confidential Information.<sup>13</sup> Comments or objections should not be filed with the Commission. On September 2, 2011, the California PUC issued an order providing that persons who object to the filing of NRUF or LNP Confidential Information with the California PUC have ten (10) days from the date of the FCC’s Public Notice (that is, this Public Notice) to file their objections with the California PUC. The August 31<sup>st</sup> Order provides that “[s]uch objections shall be in the form of a motion, and served on all parties consistent with the service requirements in this proceeding.”<sup>14</sup>

For further information, please contact Joel A. Rabinovitz, Office of General Counsel, [joel.rabinovitz@fcc.gov](mailto:joel.rabinovitz@fcc.gov), (202) 418-0689.

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<sup>10</sup> *California PUC Aug. 31<sup>st</sup> Order* at 7.

<sup>11</sup> *California PUC Order Instituting Investigation* at 19-20.

<sup>12</sup> *Id.* at 19. Information filed under the California PUC protective order is considered to be filed under seal. *See California PUC Order Instituting Investigation*, Appendix C, Protective Order, at 4.

<sup>13</sup> *See NRUF/LNP Protective Order* ¶ 15.

<sup>14</sup> *California PUC Aug. 31<sup>st</sup> Order* at 15.